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LETTER DATED 22 NOVEMBER 1994 FROM THE PERMANENT REPRESENTATIVE OF GEORGIA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

Upon the instructions of my Government, I have the honour to transmit herewith a copy of the memorandum on the Georgian-Abkhaz negotiations held at Geneva from 15 to 18 November 1994 (see annex).

I should be grateful if the present letter and its annex could be circulated as a document of the Security Council.

(Signed) P. CHKHEIDZE
Ambassador Extraordinary
and Plenipotentiary
Permanent Representative

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Annex

[Original: Russian]

Memorandum of the Georgian delegation to the negotiations at Geneva, 15-18 November 1994, issued at Geneva on 18 November 1994

A year has elapsed since negotiations began in Geneva on a settlement of the conflict in Abkhazia. What have the participants in the negotiations brought to this meeting?

1. It has become evident that the armed conflict imposed on the Republic of Georgia was planned in advance by certain political circles in the Autonomous Republic with a view to carrying through the separatist policy launched as early as 1989 and reflected in the adoption of a number of unconstitutional acts rejecting the jurisdiction of the Republic of Georgia in the territory of the Abkhaz Autonomous Republic.

2. Relying on the support of certain economic, military and even State structures in the Russian Federation and the Confederation of Caucasian Mountain Peoples, Abkhaz separatist-inclined forces were able to transform legal excesses into military excesses and obtain temporary control over almost the whole territory of Abkhazia.

3. Errors on the part of the military leadership of the Republic of Georgia gave the separatists an opportunity to unleash an armed conflict, involving thousands of mercenary soldiers from the Northern Caucasus and other parts of Russia and the most advanced military equipment.

A proper evaluation of the war has yet to be made, but already the question of responsibility is on the agenda in Georgia. Unfortunately, similar steps are not being taken by the Abkhaz side.

4. From the very outset, the Republic of Georgia has endeavoured to put a stop to the bloodshed. Controlling two thirds of the territory of Abkhazia, the Government of Georgia suspended military action and participated in the negotiations in Moscow which resulted in the drafting of the Agreement of 3 September 1992.

5. Starting on 1 October, however, the separatist forces, having used the cease-fire to build up their forces, launched active military operations, accompanied by terrible mass murders, ethnic cleansing and the forced deportation of the Georgian population in the area around the town of Gagra. Subsequently, methodically violating, one after another, the agreements reached on a cease-fire and the reduction of weapons and armed forces, the Abkhaz party to the conflict continued to pursue ethnic cleansing in the areas it had captured. Following the capture of the town of Sukhumi - which, by agreement, was unarmed - by the separatist forces, the overwhelming majority of which consisted of mercenaries, almost the entire territory of Abkhazia was under the temporary control of the separatists based in Gudauta.

6. From the very outset of the armed conflict, the Government of the Russian Federation recognized and guaranteed the inviolability of the sovereignty and territorial integrity of the Republic of Georgia (the Moscow Agreement of 3 September 1992 and other Georgian-Russian agreements and the Treaty of Friendship and Cooperation). The Supreme Soviet of the RSFSR, however, openly sided with the separatists and promoted an escalation of the conflict.

7. The inviolability of the sovereignty and territorial integrity of Georgia was recognized also by the United Nations, the Conference on Security and Cooperation in Europe (CSCE) and the Commonwealth of Independent States (CIS). The resolutions of the Security Council of the United Nations, on the basis of which the negotiations on a comprehensive settlement of the conflict in Abkhazia were initiated, called for respect for the sovereignty and territorial integrity of the Republic of Georgia.

Extract from resolution 896 (1994):

"The Security Council,

...

"4. Calls upon all concerned to respect the sovereignty and territorial integrity of the Republic of Georgia and stresses the importance it attaches to such respect;".

8. The Security Council and the Secretary-General of the United Nations and the organs of CSCE and CIS have rejected and continue to reject the attempt by the Abkhaz party to the conflict to legalize the situation which has developed and to legitimize the seizure of the territory of Abkhazia from the Republic of Georgia.

In calling for a peaceful settlement of the conflict in Abkhazia, the Security Council of the United Nations has repeatedly stressed that progress on the political status of Abkhazia must be made "respecting fully the sovereignty and territorial integrity of the Republic of Georgia" (resolution 896 (1994), para. 5).

9. The Secretary-General of the United Nations, in his report to the Security Council of 3 March 1994, clearly defined the position of the international community of States:

"29. ... It has been made clear to the Abkhaz side ... that independence achieved by force of arms is unacceptable to the international community" (S/1994/253 of 3 March 1994).

Mr. Boutros Boutros-Ghali also stated this during his visit to Tbilisi from 31 October to 2 November 1994.

The documents of CSCE and CIS express similar views.

In the Declaration on the maintenance of the sovereignty, territorial integrity and inviolability of the frontiers of States members of CIS

(15 April 1994), the Parties stated that they would "ensure compliance, in their mutual relations, with the principles of sovereignty, territorial integrity and the inviolability of frontiers" (para. 1) and "refrain ... from support for and the use of separatism against the territorial integrity and inviolability and the political independence of any State member of the Commonwealth" (para. 2), and confirmed that "the seizure of territory by force cannot be recognized and that the occupation of the territory of a State cannot be used to gain international recognition or to force a change in its legal status" (para. 3).

In a statement of the same date, the Council on Collective Security emphasized that any peacemaking operation in Abkhazia must be committed "to an early solution to the problem of refugees, to respect for human rights and national minorities", and reaffirmed its commitment to the "principle of the territorial integrity of the Republic of Georgia and the guaranteeing of the statehood of Abkhazia".

10. Thus, the claim of the Abkhaz side that it is participating in the negotiations on behalf of an independent State is untenable, since legally Abkhazia remains part of the Republic of Georgia and temporary armed control over almost the entire territory of Abkhazia has not gained, nor will it gain, legitimacy in the eyes of either the Republic of Georgia or the international community as a whole.

The only circumstance which has arisen following the separatist coup is that the territory illegally occupied by armed formations and temporarily under the control of separatist forces is a party to the armed conflict. In the search for a peaceful solution to the conflict, it is, of course, essential to take the position of that party into account, but in no way as an independent political entity.

11. One important factor which is a matter of concern to the whole international community is the fate of the refugees and displaced persons. This problem concerns above all the Georgian population of Abkhazia, which has been subjected to "ethnic cleansing", mass shootings, torture, rape and forced deportation, as a result of which 250,000 people have left the territory of Abkhazia, more than 6,000 have been killed, thousands of homes have been burned, hundreds of villages have been wiped off the face of the earth and residential areas in Gagra, Sukhumi, Ochamchire and Gali have been destroyed.

Already in 1993, in a statement dated 13 October, the Government of the Russian Federation placed the responsibility for ethnic cleansing directed against the non-Abkhaz population with the "Abkhaz authorities".

In a working paper submitted by the Special Rapporteur, Mr. A. Eide, to the Subcommission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights of the United Nations (E/CN.4/Sub.2/1994/36 of 6 July 1994), it was clearly stated that in Abkhazia "the challenge to the territorial integrity of Georgia has been accompanied by processes of ethnic cleansing" (para. 31).

In Abkhazia, a classic example of "ethnic cleansing", recognized by the General Assembly of the United Nations as "a form of genocide", that is to say,

a crime against humanity (resolution 47/121 of 18 December 1992) has taken, and is still taking, place.

The fact that a year has elapsed and no arrangements have yet been made for the return of refugees and displaced persons to their homes, since the Abkhaz side is doing its utmost to prevent the mass return of those who have been forcibly expelled, even using terror against the few still remaining in the Gali and other districts of Abkhazia and against the recently returned civilians, is evidence that ethnic cleansing is continuing and that the Abkhaz side is doing everything possible to disrupt the process of the return of refugees organized by the Office of the United Nations High Commissioner for Refugees (UNHCR) and to spin it out over many years, not allowing the restoration of the democratic structure of Abkhazia where, without the Georgian population, which comprised 47 per cent of the inhabitants, no single question about the State structure can be resolved.

The request by the Security Council that the refugees and displaced persons be allowed to return to their homes "without preconditions" is being effectively disregarded by the Abkhaz side (resolution 896 (1994)).

Moreover, an attempt is being made to settle Abkhazia with people of so-called Abkhaz origin from Turkey, Syria and other countries, with mercenary soldiers who, as a reward, are given the houses of Georgians free of charge.

The United Nations Security Council condemned "any attempt to change the demographic composition of Abkhazia, Republic of Georgia, including by repopulating it with persons not previously resident there" (resolution 896 (1994)).

This process, however, is not being monitored at all and the promise made by Mr. V. Ardzinba to reward the mercenaries with "citizenship and housing" is being consistently fulfilled (Izvestiya, 19 October 1993).

On the face of it, it is clear that an attempt is being made by the Abkhaz side to gain time, to discourage those expelled from returning to their homes and, after changing the demographic structure to its own advantage, to hold a "democratic referendum" in the depopulated land of Abkhazia.

This conclusion is confirmed by the statement by the Abkhaz side of 16 November 1994 to the effect that the question of the return of the refugees cannot be resolved until agreement has been reached on the principles of the political status of Abkhazia on the basis of recognition of Abkhazia as an independent subject of international law by the Republic of Georgia.

By setting conditions which are clearly unacceptable to the Republic of Georgia, the United Nations, CSCE and CIS, the Abkhaz side is openly pursuing a policy designed to disrupt the return of the refugees and displaced persons.

The Head of State of Georgia, Mr. E. Shevardnadze, and the Parliament of the Republic of Georgia have on more than one occasion appealed to the international community, emphasizing the very great danger inherent in the

disruption of the return of the refugees, which could have untold tragic consequences.

12. It is highly significant that, as a result of ethnic cleansing and the "sterilization" of the territory of Abkhazia of its Georgian population, as a result of the flight from Abkhazia of almost half the Abkhaz people - those who do not wish to be associated with the excesses rife in their country - and as a result of the departure from Abkhazia of many Russians, Armenians, Greeks, Estonians and others, four fifths of the population of the Autonomous Republic now find themselves outside Abkhazia. This raises the question: to what extent is the current reactionary political regime entitled to speak on behalf of the multi-ethnic population of Abkhazia? What right does a mere fraction of the Abkhaz people, a people which itself only constitutes one sixth of the population of the region, have to decide the fate of Abkhazia?!

13. A comprehensive settlement of the conflict has proved impossible without the deployment of peacemaking forces, one of whose priority tasks must be to facilitate the safe return of those who have been expelled.

Since the Security Council and the Secretary-General of the United Nations were unable to carry out such an operation, the peacemaking mission was undertaken by the Commonwealth of Independent States, in large measure by the Russian Federation, whose troops have been deployed in and near the conflict zone for the past six months. The force commanders are endeavouring to create the conditions for the return of refugees. To date, however, there has been no effective promotion of the safe return of forcibly expelled persons, because the mandate of the force does not permit it to take any action. In essence, the troops have been reduced to frontier troops, behind whose backs excesses are being perpetrated against the civilian population of Gali and other districts of Abkhazia and acts of piracy are being carried out against fishing vessels of the Republic of Georgia.

It is clear that the mandate of the peacemaking force, in its strict interpretation, does not extend to ensuring the safety of forcibly expelled persons, one of the primary tasks of peacemaking forces, according to the statement of the Council on the Collective Security of the Commonwealth of Independent States dated 15 April 1994.

There is an increasingly urgent need to assign police functions to these forces, or to attach special subunits to them, capable of protecting the civilian population from the arbitrary acts of the "Abkhaz police", made up of former militants, and to ensuring the safety of UNHCR personnel in the conflict zone.

The CIS leadership has started to take appropriate measures to that end, but so far without tangible results.

The time has also come for the necessary preparatory measures to be taken in the Psou river region, where refugees are expected to cross in accordance with the arrangements agreed upon in Sochi at the meeting between President Yeltsin and the Georgian Head of State, Mr. Shevardnadze.

14. Steps must be taken to reorganize the United Nations military observer mission, as the Abkhaz authorities can so easily block its access to places where executions of civilians are being carried out or where there are flagrant violations of the cease-fire agreement.

In order to discharge the functions assigned to it pursuant to United Nations Security Council resolution 937 (1994), the United Nations mission should have the right to visit any district, both inside and outside the conflict zone, without the consent of the parties to the conflict. Failing that, the mission will remain paralysed and it will be unable to facilitate the safe return of forcibly expelled persons, which is indisputably one of its functions pursuant to the Agreement of 14 May 1994 and Security Council resolution 937 (1994).

In general terms, it is essential for the United Nations military observer mission to cover the entire territory of Abkhazia, for, as things stand, no one is monitoring the situation outside the security zone. As noted above, refugees are also expected to return by crossing the Psou river, yet so far neither the United Nations Observer Mission in Georgia (UNOMIG) nor the peacemaking forces have been deployed there.

We might recall that, in accordance with the arrangements agreed upon back in 1993, the observers should have monitored the disarming of the armed formations and individuals who had come to take part in the conflict and their expulsion across the Psou river (Communiqué on the second round of negotiations, para. 2, 22 February 1994).

But this process has not even commenced and this section of the Georgian-Russian frontier is not covered by United Nations observers. In general, no one is monitoring what is going on between the Psou river and the security zone on the Inguri river; consequently, the flagrant violations of human rights and criminal excesses are able to continue.

15. For that reason, the negotiations on the political status of Abkhazia within the Republic of Georgia cannot be effective until the process of the mass return of refugees under the auspices of UNHCR, which has done so much to facilitate the launching of the process, has become irreversible. Consequently, both the peacemaking forces of the Commonwealth of Independent States and the United Nations military observers must do everything in their power to ensure the safety of this process.

16. We set high store by the efforts of the Special Envoy of the Secretary-General of the United Nations, Ambassador Brunner, the delegation of the Russian Federation and CSCE, yet up until now the Abkhaz side has stubbornly refused to cooperate in a constructive manner.

17. The time has come to define the fundamental principles for the political status of Abkhazia within the State system of the Republic of Georgia, but only on condition that the process of the mass return of refugees is made irreversible.

The scope of the agreement should include:

1. The inviolability of the sovereignty and territorial integrity of the Republic of Georgia in its present borders, as recognized by the international community of States;

2. The guaranteeing of the statehood of Abkhazia, due account being taken of the special interests of the Abkhaz people, as well as the interests of the multi-ethnic population of Abkhazia;

3. Outside the areas of competence assigned to the organs of power of the Republic of Georgia, the structure of which will be specified by the Constitution of the Republic of Georgia with the participation of representatives of Abkhazia on the basis of reciprocal delegation of powers, Abkhazia will possess the full range of powers established in its Constitution;

4. No change shall take place in the territory of the Republic of Georgia, including the territory of Abkhazia, without the consent of the Parliament of the Republic of Georgia. The frontiers and status of Abkhazia within the overall State system cannot be changed without the consent of the multi-ethnic population of Abkhazia;

5. The list of reciprocally delegated powers shall be given consideration in the light of the democratic processes which accompanied the collapse of the USSR and the need to refashion the State system of Abkhazia, in a new and genuinely democratic form, as dictated by international standards of constitutionalism for a State with a complex State organization.

From the above, it is evident that the Abkhaz side is undermining any possibility for the adoption of constructive decisions on a comprehensive settlement of the conflict in Abkhazia. Things cannot be allowed to continue like this and the United Nations, CSCE, CIS, the Russian Federation and UNHCR must take effective measures to expedite the return of forcibly expelled persons.

The Georgian delegation reserves the right, in the event that the Abkhaz side continues its sabotage and violation of the decisions that have been adopted, in particular, the resolutions of the United Nations Security Council, to request the Secretary-General of the United Nations and the President of the Security Council to take effective and drastic measures.